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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,488	02/15/2001	Cheryl L. Galante	00216-528001/T-680	1716

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EXAMINER
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LAMM, MARINA

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 05/19/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/784,488

Applicant(s)

GALANTE ET AL.

Examiner

Marina Lamm

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-9,11-13,16-18,20-25,27-44,46-51,53-57 and 61-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9,11-13,16-18,20-25,27-44,46-51,53-57 and 61-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 22, 23.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submissions filed on 1/9/03 and 1/21/03 have been entered.

### *Status of the Claims*

2. Claims pending are 1, 2, 5-9, 11-13, 16-18, 20-25, 27-44, 46-51, 53-57 and 61-65.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 6-9, 12, 13, 16-18, 21-25, 28-33, 35-39, 41-44, 47-51 and 54-56 are rejected under 35 U.S.C. 102(a) as being anticipated by Banowski et al. (WO 00/67712) supplied by the Applicant.

Banowski et al. teach multi-phase antiperspirant sticks containing at least two separate differently colored phases which have different compositions and which are arranged concentrically. See Abstract. Both phases contain an antiperspirant salt such as aluminum chlorohydrate in the claimed amounts, volatile silicone oil such as cyclomethicone, high melting waxes such hydrogenated castor oil. See Abstract and Examples.

Thus, Banowski et al. teach each and every limitation of Claims 1, 2, 6-9, 12, 13, 16-18, 21-25, 28-33, 35-39, 41-44, 47-51 and 54-56.

5. Claims 31, 33, 34, 36, 37, 39, 40, 42, 43, 46, 48-50, 53, 55 and 56 are rejected under 35 U.S.C. 102(e) as being anticipated by Look et al. (US 2002/0041788) supplied by the Applicant.

Look et al. teach multi-composition stick products including deodorant/antiperspirant sticks which include a first composition and a second composition which differ in one component such as colorant, fragrance, etc. See Abstract. The first and second compositions are arranged in a predetermined pattern such as stripes. See Fig. 2k and 2p. Look et al. teach a deodorant/antiperspirant composition containing, in the first portion, a high melting wax such as stearic acid which has a melting point of 69.6° C, and, in the second portion, a high melting wax such as hydrogenated castor oil and 22% of an antiperspirant salt. See Tables 8 and 9.

Thus, Look et al. teach each and every limitation of Claims 31, 33, 34, 36, 37, 39, 40, 42, 43, 46, 48-50, 53, 55 and 56.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1616

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 11, 20, 27, 34, 40, 46 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banowski et al. in view of Shelton (US 4,202,879).

Banowski et al. applied as above. Banowski et al. do not teach lengthwise-extending stripe. However, Shelton teaches multi-phase antiperspirant stick wherein the phases may be concentric or planar. See col. 15, lines 64-68; Figures 3 and 4. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to combine the teachings of Banowski et al. and Shelton in order to achieve various, aesthetically appealing patterns of the application surface.

8. Claims 57 and 61-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banowski et al. in view of Iovanni et al. (US 5,705,171) supplied by the Applicant.

Banowski et al. applied as above. Banowski et al. do not teach polyhydric alcohol and/or dibenzylidene alditol of the instant claims. However, Iovanni et al. teach gel antiperspirant sticks containing dibenzylidene alditol as a gelling agent and polyols as liquid vehicles in which the antiperspirant salts are solubilized. See col. 2, lines 32-67; col. 4, lines 19-25. The sticks of Iovanni et al. possess exceptional clarity and odor-free characteristics. See col. 3, lines 5-8. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use polyol and/or dibenzylidene alditol of Iovanni et al. for antiperspirant sticks of Banowski et al. with a reasonable expectation of beneficial results such as improved hardness and clarity of the compositions.

Art Unit: 1616

9. Claims 1, 2, 5-9, 11-13, 16-18, 20-25, 27-30, 32, 35, 38, 41, 44, 47, 51, 54 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Look et al.

Look et al. teach multi-composition stick products including deodorant/antiperspirant sticks which include a first composition and a second composition as discussed above. Look et al. do not explicitly teach the compositions containing the claimed amount of an antiperspirant salt in both portions. However, Look et al. teach that their compositions (portions) differ in at one component such as colorant, fragrance, etc. See Abstract. Thus, the reference clearly gives one a reasonable expectation of success for making antiperspirant sticks which would contain an antiperspirant salt in both portions and would differ in only one component such as colorant. It would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to employ antiperspirant salts in both portions of the Look's multicomposition sticks in view of the Look's teachings that the deodorant compositions may include antiperspirant salts and that the compositions may differ in only one component such as colorant or fragrance. One of ordinary skill would have been motivated to employ antiperspirant salts in both portions of the Look's multicomposition sticks in order to achieve increased antiperspirant effect.

10. Claims 61-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Look et al. in view of Iovanni et al.

Look et al. applied as above. Look et al. do not teach dibenzylidene alditol of the instant claims. However, Iovanni et al. teach gel antiperspirant sticks containing dibenzylidene alditol as a gelling agent See col. 2, lines 53-67. The sticks of Iovanni et al. possess exceptional clarity and odor-free characteristics. See col. 3, lines 5-8. Therefore, it would have

Art Unit: 1616

been obvious to one having ordinary skill in the art at the time the claimed invention was made to use dibenzylidene alditol of Iovanni et al. for antiperspirant/deodorant sticks of Look et al. with a reasonable expectation of beneficial results such as improved hardness and clarity of the compositions.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

***Conclusion***

11. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541.

The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

ml  
5/6/03

  
JOSE C. DEES  
SUPERVISORY PATENT EXAMINER  
1616